Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from order No. 36 of 2004

1. Smt. Kaljeet Kaur, W/O Late S.Tarsem Singh,
2. Km. Amandeep Kaur, aged 9 years,
   D/O late S.Tarsem Singh,
3. Master Nishan Singh, aged 7 yrs.,
   S/O late S.Tarsem Singh,
4. Km. Gurveer Kaur, aged 5 yrs.,
   D/O Late S.Tarsem Singh,
5. Master Pappu Singh aged 2 yrs.,
   S/O late S.Tarsem Singh (appellants No. 2 to 5 are minor, through their mother and legal guardian Smt. Kaljeet Kaur, All residents of village Haripur Futkuan, Rampur Road, Haldwani, Distt. Nainital.

….. **Appellants.**

Versus

1. Satish Chandra Joshi, S/O Sri R.D. Joshi,
   R/O D-22, Hydel Colony, Rampur Garden,
   Bareilly, Distt. Bareilly.
2. The new India Assurance Co. Ltd.
   Branch Office, near Kavisha Motors, 4th K.M.
   Rampur Road, Bareilly, Distt. Bareilly,
   Through its divisional Manager,
   Divisional Office, in front of Judges Court,
   Nainital Road,
   District Nainital.

…… **Respondents.**

Sri Lalit Sharma, Advocate, learned counsel for the appellants.
Sri M.K. Goel, Advocate, learned counsel for the respondent no.2

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Vesma, J.

Date December 09, 2004.

(Per Hon'ble B.S. Verma, J.)

This appeal, under Section 173 of the Motor Vehicles Act, 1988 ***(for short the Act)*** has been preferred against the judgment and award, dated 06-11-2003, passed by motor Accident Claims Tribunal/Addl. District Judge, Haldwani (Nainital) ***(in short the Tribunal)*** in Claim Petition No. 226 of 2002, whereby

Compensation of Rs. 3,44,500/- along with interest @ 6% per annum. Aggrieved, the claimants have come up in appeal for enhancement of compensation amount mainly on the ground that the income of the deceased was not properly considered by the tribunal.

Tarsem Singh, aged 37 years, was allegedly earning Rs. 8,000/- per month. He sustained grievous injuries in a motor vehicle accident, on 12-102002 at about 12 noon, at Rampur Road, Haldwani (Nainital). According to the claimants, on the fate-ful day, Tarsem Singh, the deceased, was waiting for vehicle on the side of the road. A maruti Car No. UP 25 K-9255, being driven rashly and negligently by its driver hit the deceased. He was immediately brought to Krishna Nursing Home Haldwani with the help of villagers. Report of accident was lodged by Chandan Singh with the police. On 11-11-2002, the deceased succumbed to his injuries. Hence, the claim petition was filed by his dependents/legal heirs for compensation of Rs. 11,60,000/- along with interest.

The owner of the vehicle filed his written statement. He admitted the accident and ownership of the vehicle. It was asserted that the accident took place due to sudden mechanical failure of the vehicle, which hit the deceased, who then was repairing his scooter over the pucca road and was himself responsible for the accident. He further pleaded that the vehicle was duly insured for the period 1.1.2002 to 31.12.2002 with New India Assurance Co. and that the amount of compensation claimed was excessive.

The Insurance Company of the Maruti Car filed its written statement asserting therein that no information of the accident was given to it, therefore, the petition was not maintainable and that the amount of compensation was exorbitant.

Learned Tribunal framed as many as five Issues in the case. On Issue No.1 it held that the accident occurred due to rash and negligent driving by the driver of the Maruti Car.On Issue Nos.

2 and 3, it held that the driver of the car was having a valid driving licence on the date of accident and the car was duly insured with the Insurance Company, Ultimately, the Tribunal determined the income of the deceased at Rs. 2,500/- per month and by applying multiplier of 16, after deducting 1/3rd towards personal expenses, dependency was determined at Rs. 3,20,000/- and, in addition to it, sums of Rs. 2,000/- towards funeral expenses, Rs. 5,000/- towards loss of consortium, Rs. 2,500/- towards loss of estate and a sum of Rs. 15,000/- towards medical treatment, thereby total amount Rs. 3,44,550/-, along with interest @ 6% per annum were awarded as compensation.

The only point for determination before us in this appeal in whether the income of the deceased was assessed properly or not. In the claim petition, income of the deceased was mentioned Rs. 8,000/-Per month. The widow of the deceased (P.W.1) stated in her testimony that the deceased used to earn Rs. 4,000/- per month from the work of religious Path as 'granthi' at other places in addition to fixed salary of Rs. 4000/- from Gurdwara. In the cross-examination, she stated that the deceased used to give Rs. 3,000/- per month for family expenses. Claimants also examined witness Darshan Singh, Secretary of Gurdwara Rampur Road, Haldwani, who proved the salary certificate showing that deceased was paid Rs. 4000/- per month. In his cross-examination, he admitted that the receipt towards payment of salary was not obtained by him on revenue stamp. He admitted that the Gurdwara Committee is not a registered one and that on inspection is made of the accounts maintained by the Gurdwara by any body. This witness did not produce salary-register showing entries prior to 14-1-2002, although in Paper No. 12/2, allegedly issued on 26-11-2002 by Darshan Singh, there is mention that the deceased was working as **Granthi** for the last five years. Unless nature of employment and other conditions thereof were disclosed, the salary certificate on record cold not be taken as strict proof of regular income. Considering the fact that the Gurdwara is situate in the rural area and there being

no regular employment, we are of the view that the Tribunal rightly assessed income of the deceased at Rs. 2,500/- per month for the purposes of determining loss of dependency. Learned Tribunal in its judgment elaborately considered the evidence on the point. We are of the considered view that taking into considering the material on record, the finding of learned Tribunal assessing monthly income of the deceased at Rs. 2,500/- does not require any interference. Undisputedly, the age of the deceased was 37 years, therefore, multiplier of 16 was rightly applied to assess loss of dependency, after deducting 1/3rd towards personal expenses. Learned Tribunal awarded compensation of Rs. 3,44,500/- along with interest @ 6% per annum, which appears to be just and proper, the judgment and award under appeal does not suffer from any illegality or infirmity.

For the discussion aforesaid, the appeal lack merit and fails.

The appeal is dismissed. The judgment and award, dated 6-11-2003, is affirmed. No order as to costs.

(B.S. Verma, J.) **(Irshad Hussain, J.)**

RCP